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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,810	11/04/2003	Jean-Pol Boutique	CM2707ML	6268

27752 7590 03/30/2005

THE PROCTER & GAMBLE COMPANY
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EXAMINER

BOYER, CHARLES I

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/700,810

Applicant(s)

BOUTIQUE ET AL

Examiner

Charles I. Boyer

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 21-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/4/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-20, drawn to a laundry composition, classified in class 510, subclass 276.
 - II. Claims 21-24, drawn to a method for treating fabrics, classified in class 134, subclass 22.14.
 - III. Claims 25 and 26, drawn to process of making a detergent, classified in class 510, subclass 466.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and III are related as process of making and process of using the product. The use as claimed cannot be practiced with a materially different product. Since the product is not allowable, restriction is proper between said method of making and method of using. The product claim will be examined along with the elected invention (MPEP § 806.05(i)).
3. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by simply mixing the components.

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4. Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case fabrics may be contacted with many different compositions.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Laura Grunzinger on March 9, 2005 a provisional election was made with traverse to prosecute the invention of group I, claims 1-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 21-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 20 provides for the use of a detergent, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 20 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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11. Claims 1, 2, and 5-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Kasturi et al, US 6,827,795.

Kasturi et al teach mild detergent compositions comprising a variety of cationic polymers, anionic surfactants, amphoteric/zwitterionic surfactants, polydimethylsiloxane, and the balance water (see examples 23-29). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

12. Claims 1, 2, and 5-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel, US 5,747,435.

Patel teaches mild detergent compositions comprising polyquaternium-10, anionic surfactant, zwitterionic surfactant, polyoxyethylene dimethyl siloxane, and the balance water (col. 10, example 1). Another example comprises polyquaternium-10, anionic surfactant, zwitterionic surfactant, trimethylsilylamodimethicone, and the balance water (col. 15, example 21). Yet another example comprises polyquaternium-10, anionic surfactant, zwitterionic surfactant, Silquat 100, and the balance water (col. 15, example 22). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

13. Claims 1-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Decoster et al, US 6,028,041.

Decoster et al teach a composition for cleansing and conditioning the hair comprising Jaguar C13S, anionic surfactant, amphoteric surfactant, amodimethicone,

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polydimethylsiloxane, citric acid (a well known builder) and the balance water (col. 15, example A). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

14. Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Duden et al, US 6,808,701.

Duden et al teach conditioning compositions comprising polyquaternium-10, anionic surfactant, zwitterionic surfactant, trimethylsilylamodimethicone, dimethicone copolyol, citric acid (a well known builder) and the balance water (col. 24, table 4). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

15. Claims 1, 2, and 5-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Kilgour et al, US 6,545,085.

Kilgour et al teach a personal care composition comprising polyquaternium-10, anionic surfactant, zwitterionic surfactant, cyclopentasiloxane, dimethicone copolyol and the balance water (col. 13, example 19). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.


16. Claims 1, 2, and 5-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Murray et al, US 6,277,361.

Murray et al teach shampoo compositions comprising Jaguar C13S, non-amino functionalized silicone, amino functionalized silicone, and the balance water (col. 8, example). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-F 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571 272 1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Charles I Boyer
Primary Examiner
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